

1 Lawrence R. Ream, admitted *pro hac vice*
Email: lream@schwabe.com
2 Daniel R. Kubitz, OSB #181381
Email: dkubitz@schwabe.com
3 SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW 5th Ave., Suite 1900
4 Portland, OR 97204
Telephone: 503.222.9981

5 Attorneys for ICTSI Oregon, Inc.

6
7
8
9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In re:

12 LOCAL 8, INTERNATIONAL
13 LONGSHOREMEN'S AND
14 WAREHOUSEMEN'S UNION,
Debtor.

Chapter 11

No. 23-32366-pcm11

ICTSI OREGON, INC.'S RESPONSE AND
RESERVATION OF RIGHTS RE DEBTOR'S
FIRST DAY MOTIONS

16 This is the response and reservation of rights of creditor ICTSI Oregon, Inc. ("ICTSI") to
17 the "First Day Motions" [Dkt. 11–13] filed by the above captioned debtor ("**Debtor**" or
18 "**Local 8**"). ICTSI is concurrently filing the Declaration of Michael Garone (the "Garone
19 Declaration") in support of this response. Attached as exhibits to the Garone Declaration are the
20 documents referenced in the footnotes below. Some of the exhibits are voluminous, but they are
21 nevertheless provided as points of reference or background, and for the sake of completeness.
22 ICTSI does not, however, intend to argue in a detailed manner from the exhibits at the time of the
23 emergency hearing.

24 **PRELIMINARY STATEMENT**

25 While the relief sought via the First Day Motions might be considered routine in a typical
26 case, this case is anything but typical. Debtor is but one part of a larger organization, the legal

1 and practical structure of which is opaque to ICTSI. As ICTSI understands it, the International
2 Longshore and Warehouse Union (“ILWU”) is comprised of many parts--indeed, more than
3 ICTSI can presently itemize. But at a minimum, ILWU includes its Coast Longshore Division
4 (“CLD”)—which ICTSI understands pursues ILWU’s interests in the longshore industry on the
5 West Coast—and its Local 8, which is comprised of longshore workers in the Portland area. As
6 relevant to debtor's filing here:

- 7 • This is not a typical subchapter V bankruptcy proceeding because of ICTSI’s claim for
8 tens of millions of dollars against Debtor, and there is a serious question regarding
9 whether this bankruptcy filing is proper at all, or should be dismissed in light of the
10 existence of several indicia of bad faith, including prominently what appears to be forum
11 shopping to resolve what is essentially a two party dispute in this Court;
- 12 • the Debtor asserts that it is a wholly independent unincorporated association but fails to
13 adequately disclose its relationship with (1) the ILWU, the labor union that issued Debtor
14 its charter and listed Debtor as a party to such charter in its subchapter V bankruptcy
15 filing currently pending in the Norther District of California,¹ and (2) the CLD, which has
16 paid the legal fees incurred in the Debtors’ and ILWU’s litigation with ITCSI;²
- 17 • Debtor and ILWU have been found liable to ICTSI for unlawful labor actions committed
18 over the course of several years, *ICTSI Oregon Inc. v. International Longshore and*
19 *Warehouse Union and ILWU Local 8*, Case No. 3:12-cv-01058-SI, in willful
20 disobedience to an injunction issued in the United States District Court for the District of
21 Oregon. *Hooks v. International Warehouse Union et al*, Case No. 3-12-cv-1088-SI; and

22
23 ¹ See Schedule G filed at Dkt. 32 in *In re Int’l Longshoremen’s and Warehouseman Union*,
Case No. 23-30662-HLB (Bankr. N.D. Cal.) (“**ILWU Bankruptcy**”).

24 ² See Schedule G (listing no executory contracts with the ILWU but listing a bond contract with
25 the CLD) [Dkt. 1]; see also n.13, *infra*. While Sections 3.1 and 3.3 of the Debtor’s Statement
26 of Financial Affairs [Dkt. 1] do disclose a transfer to the CLD for “pro rata payment for
affiliation” and a transfer to the ILWU for “per capita affiliation” respectively, this does not
equate to adequate disclosure of Debtor’s relationships to these entities.

- 1 • the Debtor's omissions in its filings lack transparency, even though as discussed below
2 ICTSI believes that associated entities will be implicated in the ultimate resolution of this
3 bankruptcy case and discovery and analysis of undisclosed fraudulent transfers, breach of
4 fiduciary duty claims, or other claims against CLD and ILWU will be needed prior to
5 confirmation of any plan.

6 While relief associated with the First Day Motions may be appropriate on an interim
7 basis, ICTSI believes that in light of the emergency nature of the requests, any order should be
8 expressly interim in scope, narrowly tailored, and without prejudice to the positions creditors
9 might take at a final hearing or on any other matters in the case.

10 What follows is a background discussion to provide the Court with context missing from
11 the Debtor's moving papers. This context also relates to the points raised above and is hopefully
12 a helpful roadmap to the Court of matters likely to be at issue in the near term.

13 **BACKGROUND AND DISCUSSION**

14 ICTSI leased a container shipping terminal at which ILWU and Local 8 members (a)
15 performed stevedoring services, (b) engaged in a half-decade of unlawful labor actions, and (c)
16 caused up to \$142 million in damages. Under 29 U.S.C. §§158(b)(4)(B), a business is entitled to
17 recover damages from a union that coerces it in pursuit of the union's goals elsewhere. Here,
18 Local 8 and ILWU wanted another union's jobs—jobs controlled by the Port of Portland.³ To
19 force that reassignment, Local 8 and ILWU in May 2012 threatened to destroy the Port's tenant,
20 ICTSI, and began unlawfully executing that threat.⁴ Among other things, ILWU's and Local 8's
21 unlawful labor actions caused ICTSI's customers to eventually stop sending ships to ICTSI's
22 leased terminal.⁵ Out of options, ICTSI bought out its lease in March 2017.⁶

23 ³ See Exhibit A to Garone Declaration (Excerpts from Final Jury Instr. at 20, 23, 31, *ICTSI Or.,*
24 *Inc., v. ILWU*, No. 3:12-cv-01058-SI (D. Or. Oct. 31, 2019), ECF No. 615).

25 ⁴ *Id.* at 22-28.

26 ⁵ *ICTSI Or., Inc. v. ILWU*, 442 F. Supp. 3d 1329, 1358 (D. Or. 2020).

⁶ *Id.* at 1356.

1 Local 8's liability for damages is clear. The District Court for the District of Oregon
2 (Judge Michael Simon presiding) promptly enjoined Local 8's and ILWU's pursuit of the other
3 union's jobs and later held Local 8 and ILWU in contempt of court; and the NLRB also twice
4 found Local 8's and ILWU's conduct to be unlawful (both times affirmed by the D.C. Circuit).⁷

5 In 2019, Judge Simon presided over a jury trial in which the jury found that (a) Local 8
6 and ILWU persisted in its illegal conduct through ICTSI's termination of business operations in
7 March 2017; and (b) Local 8's and ILWU's course of unlawful conduct between June 2012 and
8 March 2017 was the sole cause of ICTSI's damages.⁸

9 When ILWU filed its bankruptcy petition, the parties were on the cusp of retrying
10 damages. Although the first jury awarded ICTSI \$93.6 million damages, the district court found
11 that ICTSI had not adequately proved certain assumptions, mostly relating to its lost profits.⁹
12 Thus, when the Court gave ICTSI a choice between a new trial on damages or accepting \$11.45
13 million for buying out its lease and \$7.6 million, reflecting *Local 8's and ILWU's* expert's
14 estimate of ICTSI's excess labor costs and lost profits, *id.* at 1366,¹⁰ ICTSI elected to better
15 prove its tens of millions in lost profits in a new trial.

16 Currently, each party has served hundreds of pages of new expert reports; spent weeks
17 deposing experts; and filed extensive *Daubert* motions and responses on August 25, 2023, and

18
19 ⁷ Final Jury Instr. at 17-22. The referenced decisions include *ILWU v. NLRB*, 705 F. App'x 1
20 (D.C. Cir. 2017) (*per curiam*) (affirming NLRB decision); *ILWU v. NLRB*, 705 F. App'x 3
21 (D.C. Cir. 2017) (*per curiam*) (affirming NLRB decision); *Hooks ex rel. NLRB v. ILWU*, 72 F.
22 Supp. 3d 1168 (D. Or. 2014) (holding ILWU in contempt for violating injunction between its
23 issuance in July 2012 and August 13, 2013).

24 ⁸ See Exhibit B to Garone Declaration (Special Verdict, Qs. 1, 3, 4, 6, *ICTSI Or., Inc., v. ILWU*,
25 No. 3:12-cv-01058-SI (D. Or. Nov. 4, 2019), ECF No. 620).

26 ⁹ *ICTSI Or., Inc.*, 442 F. Supp. 3d at 1359-66.

¹⁰ This figure of \$7.6 million, testified to by the Debtor's own expert, casts serious doubt on the
debtor's eligibility to proceed via Subchapter V. That doubt remains even though, in
preparation for the damages trial scheduled for February 26, 2024, ILWU's damage expert
changed his estimation method and now says ILWU's unlawful conduct most likely did not
cause any damages, or, caused, at most, \$3.9 million before considering additional capital
expenditures. See Exhibit H to Garone Declaration (Defendants' Damages Summary).

1 September 27, 2023, respectively. Judge Simon was prepared to schedule a *Daubert* hearing in
2 December, 2023. The two-week trial was set for February 26, 2024, though that date has been
3 stricken from the schedule due to the ILWU bankruptcy filing and the district court has reserved
4 a March trial date.

5 Separately, and with respect to issues that will require serious attention at a later date, the
6 Court should be aware that the Debtor, ILWU, and CLD have in the past taken liberties in their
7 associated relationships. Two examples are mentioned above: the Debtor's failure to disclose the
8 related bankruptcy of ILWU and its failure to list any contractual relationship with ILWU.¹¹
9 Another example is the way in which the Debtor and CLD have handled the ICTSI litigation on
10 their respective federal financial disclosures. Under the Labor-Management Reporting and
11 Disclosure Act, labor unions are required to file several annual financial reports with the
12 Department of Labor. Among those forms is an LM-2, a financial disclosure form that *requires* a
13 labor organization to list its assets, *liabilities*, income, expenditures and other detailed financial
14 information. The Debtor's LM-2 forms have not recently listed ICTSI's claims as contingent
15 liabilities of the Debtor, as is required under federal law.¹² Nor do Debtor's LM-2 forms indicate
16 that it ever paid any attorney fees, costs, or other expenses regarding the ICTSI litigation. Instead,
17 those fees, costs and expenses have been paid by the ILWU's Coast Longshore Division.¹³ Despite
18 these facts, the Debtor states that it "is unable to pay the extremely large legal fees and
19 expenses that will be required to continue the ICTSI litigation" and that "any damages awarded
20 to ICTSI would very likely exceed Local 8's ability to pay."¹⁴

21 ¹¹ However, Debtor has listed the "I.L.W.U." as a codebtor of the ICTSI obligation. *See*
22 Voluntary Petition for Non-Individuals Filing for Bankruptcy, Schedule H [Dkt. 1].

23 ¹² *See* Exhibit C to Garone Declaration (Local 8's 2022 LM-2 at 2, 21-25); Exhibit D (Local 8's
2021 LM-2 at 2, 21-25); Exhibit E (Local 8's 2020 LM-2 at 2, 21-25).

24 ¹³ *See, e.g.,* Exhibit F to Garone Declaration (CLD 2022 LM-2 at 38, 56-57, 61, 65); Exhibit G
to Garone Declaration (CLD 2021 LM-2 at 27, 29, 37-38).

25 ¹⁴ *See* Debtor's Motion for Authorization to Pay Prepetition Payroll Expenses and Related
26 Taxes, Continue Payroll Accounts, and Granting Related Relief [Dkt. 12], attached
Declaration of Troy Mosteller in Support of First Day Motions, ¶ 10.

1 Under the circumstances presented, there is a serious question regarding whether this
2 bankruptcy filing is proper or should be dismissed in light of the existence of several indicia of
3 bad faith. It is also unclear to ICTSI how the ILWU entity seeking relief here, Local 8, aligns
4 with the ILWU and various ILWU divisions, such as the CLD, and their assets, liabilities, and
5 cash flows. To the extent this case proceeds to a plan process, a robust inquiry into these areas
6 will be necessary.

7 **CONCLUSION**

8 This is no routine bankruptcy filing. Setting aside the interim relief sought via the First
9 Day Motions, a larger question looms: whether the debtor is pursuing a proper bankruptcy
10 purpose at all in seeking relief from this Court. Answering that question will be critically
11 important.

12 Dated this 23rd day of October, 2023.

13 SCHWABE, WILLIAMSON & WYATT, P.C.

14
15 By: /s/ Daniel R. Kubitz
16 Lawrence R. Ream, admitted *pro hac vice*
17 Email: lream@schwabe.com
18 Daniel R. Kubitz, OSB #181381
19 Email: dkubitz@schwabe.com
20 Telephone: 503.222.9981

21 Of Attorneys for ICTSI Oregon, Inc.
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October 2024, I caused to be served the foregoing
ICTSI OREGON, INC.'S RESPONSE AND RESERVATION OF RIGHTS RE DEBTOR'S
FIRST DAY MOTIONS and the DECLARATION OF MICHAEL GARONE IN SUPPORT OF
ICTSI OREGON, INC.'S RESPONSE AND RESERVATION OF RIGHTS RE DEBTOR'S
FIRST DAY MOTIONS:

by:

<input type="checkbox"/>	U.S. Postal Service, ordinary first class mail
<input type="checkbox"/>	U.S. Postal Service, certified or registered mail, return receipt requested
<input type="checkbox"/>	hand delivery
<input type="checkbox"/>	facsimile
<input checked="" type="checkbox"/>	electronic service (ECF)
<input type="checkbox"/>	other (specify) _____

/s/ Daniel R. Kubitz
Daniel R. Kubitz